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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

KYLE THOMAS KOENIG,

Defendant and Appellant.

A143474

(Del Norte County
Super. Ct. No. CRF149193)

Appellant Kyle Thomas Koenig appeals following his jury trial conviction for being a felon in possession of a firearm (Pen. Code, § 29800, subd. (a)(1) ¹), enhanced by his postconviction admission that he had previously been convicted of a violent or serious felony, within the meaning of the Three Strikes law (§§ 667, subd. (b), 1170.12), and his admission that he had served two prior state prison terms, within the meaning of section 667.5, subdivision (b).

The sole issue raised on appeal² is the sentencing error by the trial court in failing to award appellant any presentence custody credits for good conduct, as required by section 4019, subdivision (f). Respondent agrees that the trial court erred in awarding credit only for actual time in custody, under section 1170.12, subdivision (a)(5).

¹ All further statutory references are to the Penal Code unless otherwise specified.

² Appellant contends that the custody credit issue he raises on appeal is not barred by section 1237.1, which requires that a custody credit issue be raised in the trial court if it involved a “mere alleged mathematical or clerical error” because here the error was one of law. (*People v. Delgado* (2012) 210 Cal.App.4th 761, 765.) Respondent concedes the procedural point.

At sentencing following his conviction and admissions, the trial court sentenced appellant to an aggregate state prison term of eight years, calculated as follows: The court selected the upper term of three years for the underlying firearm possession conviction, doubled that term because of appellant's prior admitted strike conviction, and added two one-year consecutive terms for each of appellant's two prior served prison terms.

As to custody credits, the court awarded appellant only 206 actual days of custody credit and no conduct credits. The failure to award the conduct credits was based on the trial court's erroneous understanding that appellant's prior strike conviction made him ineligible for any conduct credits, citing section 1170.12, subdivision (a)(5). In actuality, the limitation on conduct credits applies only after appellant commences serving his time in state prison for the present offenses. (*People v. Henson* (1997) 57 Cal.App.4th 1380, 1385.) Up until that time, appellant was entitled to day for day conduct credit under section 4019, subdivision (f). Respondent concedes the error, and joins in appellant's request that we order the abstract of judgment be amended to award appellant an additional 206 days of conduct credit. We agree.

DISPOSITION

The trial court is hereby ordered to prepare an amended abstract of judgment awarding appellant an additional 206 days of presentence good conduct custody credit. The judgment and sentence is otherwise affirmed.

RUVOLO, P. J.

We concur:

RIVERA, J.

STREETER, J.